

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 212 of 1989

in

SPECIAL CIVIL APPLICATION No 6950 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NINABEN D CHAUDHARY

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT for Appellant

MR MA BUKHARI AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 23/02/2000

ORAL JUDGEMENT (Per A.M. Kapadia, J.):

1. In this appeal filed under clause 15 of the Letters Patent the appellant herein has brought under challenge the judgment and order dated 29.12.1988 recorded by the learned Single Judge in Special Civil Application No. 6950 of 1988 whereby the petition filed under Article 226 of the Constitution of India praying for the relief of issuance of a writ of mandamus or any other appropriate writ or order to quash the order setting aside the auction sale held in her favour on 13.12.1985 for plot No. 375-A/2 of Sector No.28, Gandhinagar, passed by the Collector, Gandhinagar, District Gandhinagar, as confirmed by the State of Gujarat, is dismissed.

2. The appellant is the original petitioner whereas the respondents are the original respondents. For the sake of convenience we propose to refer to the parties as 'the petitioner' and 'the respondents' in this judgment.

3. Before highlighting the nature of controversy posed for our consideration in this appeal, it is necessary to narrate relevant facts of the case briefly.

3.1. Pursuant to a public advertisement which appeared in Gujarati Daily "Sandesh" declaring that three open residential plots in the city of Gandhinagar were to be offered for sale to the members of public, by auction, the petitioner participated in the auction of the plot No. 375-A/2 admeasuring 200 sq.mt. situated in Sector No.28, Gandhinagar. Rs.425/- per sq.mt. was fixed as its upset price. The proclamation of sale, Annexure B, was issued under Section 166 of the Bombay Land Revenue Code (hereinafter referred to as 'the Code' for short).

3.2. As a condition precedent, every bidder had to deposit 1/4th amount of the upset price fixed before being eligible for participating in the bid. Accordingly, the petitioner had deposited Rs.25,200/- being the 1/4th amount of the upset price with the Mamlatdar, Gandhinagar and participated in the auction. At the said bid 11 persons had participated and the petitioner had offered the highest bid of Rs.504/- per sq.mt. No other person who had participated at the bid, had offered price higher than that. Therefore the highest bid offered by the petitioner was accepted by the Mamlatdar. Thereafter sale proceedings were prepared and other four persons who had offered price lower than that of the petitioner had also put their signatures on the said proceeding, in the presence of the Mamlatdar,

Gandhinagar. The proceedings are produced at Annexure C to the petition. The sale is subject to confirmation by the Collector and therefore proceedings were sent to the Collector, Gandhinagar for confirmation. The remaining amount of the price of the plot was to be paid after the auction was confirmed by the Collector in view of provisions of Section 172 of the Code.

3.3. Instead of confirming the auction sale the respondent No.2, i.e., Collector, Gandhinagar, wrote a letter dated 24.2.1986 intimating the petitioner that the price offered by the petitioner was less as compared to that of the price of other plots in Sector No.28 and as there was a collusion between bidders as well as absence of healthy competition, the said auction sale was set aside. In the said letter/order it was also mentioned that the 1/4th amount which was deposited by the petitioner should be refunded to her without interest. That order is annexed at Annexure D to the petition.

3.4. Aggrieved by the aforesaid order passed by the Collector, the petitioner preferred revision application before the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad under Section 211 of the Code. The said revision application came to be rejected by order dated 16.4.1988 produced at Annexure G to the petition.

3.5. Dissatisfied by the aforesaid two orders, the petitioner approached this Court by filing Special Civil Application No.6950 of 1988 under Article 226 of the Constitution of India. The learned Single Judge, on appreciation and evaluation of the averments made in the petition and on perusal of both the impugned orders as well as submissions advanced at the bar by the learned counsel for the parties, recorded the following conclusions:

- i) There was no concluded contract between the parties. Therefore, Civil Suit also would not be maintainable for the prayer made by the petitioner for directing the authority to enter into contract by specifically performing the same;
- ii) Assuming that there is a concluded contract, in that case also as the matter relates to contractual rights and obligations between the parties a petition under Article 226 of the Constitution is not maintainable for enforcement of contractual obligations;

iii) When the Collector decides either to confirm the auction or to set aside the sale, he takes the decision on behalf of the State and, therefore, he is not required to offer opportunity of being heard to the party who had made the offer for purchase. To put it differently, it was not necessary to follow the principles of natural justice before setting aside auction sale.

In view of these conclusions, the learned Single Judge rejected the petition by the impugned judgment which is under challenge in this Appeal filed under clause 15 of the Letters Patent.

4. We have heard learned advocate Mr. Bhatt for the petitioner and learned A.G.P. Mr. Bukhari for the respondents, at length.

5. The pith and substance of the submissions advanced by learned advocate for the petitioner centers round the maintainability of the petition and non-issuance of show cause notice by the Collector before passing the impugned order. According to him, the contract entered into between the petitioner and respondents was in exercise of statutory power under the Code and as petitioner has alleged breach of the provisions of Section 179 of the Code, the petition is maintainable. It was pleaded that setting aside of auction sale has adversely affected the proprietary rights of the petitioner and, therefore, the Collector should have followed principles of natural justice before passing order which was impugned in the petition. He further contended that the learned Single Judge has not considered both these aspects in their proper perspective and therefore the impugned judgment recorded by the learned Single Judge should be quashed and the matter should be remanded to the Collector with a direction to issue show cause notice to the petitioner and give an opportunity of hearing to her before passing an order under the proviso to Section 179 of the Code.

6. The learned A.G.P. has supported the impugned judgment whole hog and contended that the learned Single Judge has rightly held that the petition under Article 226 for enforcement of contractual obligations is not maintainable. He further contended that the sale was not concluded as the remaining 3/4th of the price has not been accepted by the authority and, therefore, the appeal should be dismissed. In support of the aforesaid submissions he placed reliance on a reported judgment of the Apex Court in Hindustan Petroleum Corporation Ltd.

and another v. Dolly Das, (1999) 4 SCC 450.

7. In view of the rival submissions advanced by the learned advocates for the parties, the first question which falls for determination in this appeal is as to whether in a case involving breach of alleged contractual obligations by the State or its agent in exercise of a statutory power a writ petition under Article 226 of the Constitution of India is maintainable. It is now well settled by catena of decisions of the Apex Court that the cases involving breaches of the alleged contractual obligations by the State or its agents stand divided into following three categories:

- (i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;
- (ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and
- (iii) Where the contract entered into between the State and the person aggrieved is not statutory but purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.

In this case we are concerned with category (ii). In the instant case the contract was entered into between the petitioner and the State through its officer in exercise of the statutory powers under the Code and the petitioner has alleged the breach on the part of the Officer of the State. The category No. (ii) mentioned above covers those cases where the contract is entered into between an individual and the State in exercise of some statutory powers. In this case the breach complained of is of a statutory obligation and allegation of the petitioner is not merely a breach of contract which can be enforced only in Civil Court but the action which is being challenged is of a public authority vested with statutory powers and hence in exercise of its writ jurisdiction Court can grant the relief to the aggrieved person.

8. We derive support for the aforesaid view from the

judgments of the Supreme Court in the D.F.O. South Kheri & others v. Ram Sanehi Singh, AIR 1973 SC 205 and Radhakrishna Agarwal & others v. State of Bihar and others, AIR 1977 SC 1496. In Cooverjee v. Excise Commissioner, AIR 1954 SC 220, the Collector of Excise held an auction sale of country liquor shop in accordance with the rules and the highest bid was accepted. Half of the auction price was deposited immediately but the balance amount was paid late. The petitioner, who was an unsuccessful bidder, filed a petition in the Supreme Court under Article 32. Though the petition was dismissed on merits, the Court held that it was open to the petitioner to approach the High Court under Article 226 for a writ of mandamus if the officers concerned had conducted themselves not in accordance with law or if they had acted in excess of their jurisdiction. Similarly, in Guruswamy v. State of Mysore, AIR 1954 SC 592, when the liquor contract was given contrary to the statutory provisions, the Supreme Court held that an aggrieved party can question the said action by filing a writ petition because he has a right under the law of the State to receive the same treatment as well as be given the same chances as anybody else and in such a case, therefore, ordinarily, the petitioner is entitled to get a writ from the Court. In D.F.O. South Kheri (supra), an auction to cut timber was held by the Forest Officer and the petitioner's bid was accepted. Subsequently, however, it was cancelled and the petitioner approached the High Court by filing a petition under Article 226. It was contended that the remedy of the petitioner was to claim relief in a suit for enforcement of contract or for damages and not in a petition under Article 226. Negativing the plea and following Guruswamy's case it was observed by the Supreme Court as under:

"We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ..... There can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

In Union of India v. Hariram Shamji, 1974 UJ (SC) 562, the Port Trust held public auction of large quantity of goods. The petitioner was one of the bidders and his bid was accepted by the authorities.

Subsequently, however, the Port Trust refused to deliver goods. The petitioner approached the High Court by filing a petition under Article 226 of the Constitution. The High Court allowed the petition holding the action of the Port Authorities as unauthorised and contrary to law. The authorities approached the Supreme Court. It was contended on behalf of the Port Trust that the claim made by the petitioner was in substance a claim for specific performance of a contract and normally, it was not the practice of the High Court to enforce the rights and obligations arising out of a breach of contract.

Negativiving the contention, the Apex Court made the following pertinent observations:

"Counsel for the Port Trust adopted the arguments of counsel for the Union and submitted in addition that the claim made by the petitioner was in substance a claim for specific performance of a contract, and it is the normal practice of a High Court, that to enforce the rights and obligations arising out of a breach of contract, the High Court will not entertain a petition under Art. 226 of the Constitution, but we relegate the parties to a civil suit. It is true as held by this Court in Lekhraj Satramdas Lalvani vs. Deputy Custodian cum Managing Officer and Others (1966) 1 SCR 120, that to enforce obligations arising out a breach of contract, the High Court will not entertain a writ petition. But in the present case, the petitioner was not seeking to enforce a contractual obligation. Under the general conditions of the auction when the bid of the petitioner was accepted, he became the owner of the goods. After the bid of the petitioner was accepted, the goods auctioned remained in the custody of the Port Trust for and on behalf of the petitioner. The petitioner was not thereafter seeking to enforce the terms of any contract: he was enforcing his right to the goods on payment of the price. Counsel for the Port Trust relied upon secs. 57 and 58 of the Sale of Goods Act, 1930, and contended that even in a suit where the title to the property has passed, the Court may award damages and may not order delivery of specific goods. But that, in our judgment, is wholly irrelevant. A public authority refusing to deliver goods belonging to a citizen must, if called upon, show some adequate ground for his refusal, and must set up

adequate grounds for his claim that the citizen be driven to a long and costly litigation by filing a suit for the value of the goods or for damages for non delivery. The only ground suggested before us was that the sale of "prime quality goods" was not authorised and was never intended to be made. That contention we have already negatived. Apart from that plea, there is no other ground of justification set up by the Port Trust for refusing to deliver the goods of the petitioner."

In Gujarat State Financial Corporation v. Lotus Hotels, (1983) 3 SCC 379, it was contended that the dispute between the parties was in the realm of contract and even if there was a breach of contract on the part of the Corporation, a remedy lay elsewhere but a writ of mandamus could not be issued compelling the Corporation to specifically perform the contract.

Repelling the contention, the Supreme Court held that:

"If appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory Corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by 'other authority' as envisaged by Article 12."

In Dwarkadas Marfatia v. Bombay Port Trust, AIR 1989 SC 1642, the Supreme Court held that all actions including contractual dealings of a statutory authority are subject to judicial review, and if they are arbitrary or unreasonable, they are required to be struck down.

Approving the observations of Bombay High Court in the case of Rampratap v. Domination of India, AIR 1953 Bombay 170, the Supreme Court further observed:

"The contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position

occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible."

9. Keeping in forefront the aforesaid principles laid down by the Supreme Court if we examine the case on hand there is no manner of doubt that pursuant to the public advertisement issued by the Collector for auctioning the plot in question the petitioner along with others had participated in the auction and her bid being highest was accepted. She had also paid requisite 1/4th amount of the upset price before participating in the auction. At the said auction proceeding she had offered Rs.504/- per sq. mt. which is more than the upset price fixed by the Town Planner. She was declared the highest bidder and her bid was accepted. The said auction was initiated and completed under the provisions of Sections 165 to 167 of the Code. As per the Scheme of the Code, the sale proceedings were to be sent to the Collector for his confirmation and thereafter the Collector was to exercise powers under Section 179 of the Code which empowers him either to confirm or to set aside the sale if an application is submitted by a third party. By virtue of the proviso he is also empowered to set aside the sale after recording reasons for doing so. In this case when the proceedings were placed before the Collector, after lapse of time, he sent the letter/order dated 24.2.1986 informing the petitioner about setting aside of the auction sale on the grounds mentioned therein. Thus the sale conducted and concluded in favour of the petitioner under the statutory provisions of the Code is set aside by the Collector in exercise of statutory power. The power vested in the Collector to set aside concluded auction sale is plenary in nature. We have examined the scheme of the Code as well as factual scenario of the present case and are of the opinion that the Collector has exercised plenary powers under the proviso to Section 179 of the Code. This is not a petition for payment of money due under a contract or to avoid consequences of contractual obligations. In a given case, the Court may interfere under Art. 226, where though the cause of action arises out of or pertaining to a contract, there is some other feature

which brings the cause within the sphere of public law, for example, refusal to enter into a contract with a citizen resulting into breach of statutory provision or breach of statutory obligation. Here the contract is governed by a statute, namely, the Bombay Land Revenue Code and what is alleged by the petitioner is that exercise of plenary power by the Collector is arbitrary and contrary to principles of natural justice. This is a case of sale of public property by the instrumentalities of the State under statutory provisions. As per case of the petitioner, the Collector has not acted objectively but taken an action contrary to scheme of the Code. Therefore, when breach of statutory provision is complained of, a petition under Article 226 would be maintainable. The claim of the petitioner is not merely contractual which can be enforced only in Civil Court but the action which is challenged is of a public authority vested with statutory powers and, therefore, petition under Article 226 of the Constitution is maintainable. The view taken by the learned Single Judge that the petition is for enforcement of contractual obligations and therefore not maintainable, is not in consonance with the principles expressed by the Supreme Court in the decisions which have been referred to hereinabove. The reliance placed by learned A.G.P. for the respondents on the decision in State of H.P. v. Raja Mahendra Pal and others, (1999) 4 SCC 43, for canvassing the point that the petition is not maintainable is of no avail because there the Supreme Court was not called upon to consider the question the effect of contract entered into by the instrumentality of the State under a statutory power. The learned Single Judge while holding that the petition is not maintainable has considered only one aspect i.e., that the Collector was required to confirm the sale and, therefore, petition was not maintainable. In fact the Collector has exercised powers vested in him under the proviso to Section 179 of the Code and set aside the concluded sale. This aspect was never highlighted before the learned Single Judge. When it is alleged that the order setting aside the sale is contrary to the statutory provisions, a writ petition is always maintainable under Article 226 of the Constitution. Therefore, the said finding of the learned Single Judge being erroneous in law is liable to be set aside and we hereby set aside the same and hold that the petition is maintainable.

10. This takes us to the second question whether the order passed by the Collector as confirmed by the revisional authority is valid in the eye of law. Before answering the aforesaid question, it would be appropriate to refer to Section 179 of the Code which reads thus:

"179. Order confirming or setting aside sale--

On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale:

Provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may after recording his reasons in writing, set aside the sale."

From a bare reading of the aforesaid section it can be gathered that as and when the proceeding of the auction is received by the Collector he has power either to confirm the sale within a period of thirty days from the date of the sale or if any application is preferred as envisaged under section 178 of the Code for setting aside the sale, on the grounds mentioned therein he may set aside the sale and if such application is rejected then he has to pass an order confirming the sale. So far as the proviso to Section 179 of the Code is concerned, it is clear from the bare reading of it that the Collector may exercise suo motu powers to set aside an auction sale if he has reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on the grounds alleged in any application or on the grounds other than those alleged in any application which has been made. Of course, before setting aside an auction sale in exercise of suo motu powers, he has to record reasons.

11. Indisputably, in the instant case, as could be seen from the order dated 24.2.1986 the Collector has exercised powers under the proviso to Section 179 of the Code. From a perusal of the said order it is apparent that the Collector has recorded reasons for setting aside the sale. While examining the validity of the order of the Collector, the question that arises is whether an opportunity of being heard ought to have been afforded to the petitioner before setting aside the auction sale. The proviso to Section 179 of the Code specifically does not provide for giving an opportunity of being heard to

the affected person and, therefore, the learned counsel for the petitioner has urged that principles of natural justice should be read into the proviso to Section 179 of the Code whereas the learned A.G.P. has asserted that the principles of natural justice having been excluded they should not be read into the proviso.

12. In view of the aforesaid rival submissions now let us examine what is the meaning of natural justice. The phrase 'natural justice' is not capable of static and precise definition. However, a duty to act fairly, i.e., in consonance with the fundamental principles of substantive justice, is generally implied, irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair-play in action. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions of proceedings, be given adequate notice of what is proposed so that they may be in a position, (a) to make representation on their own behalf; (b) or to appear at a hearing or inquiry (if one is held); and (c) to prepare their own case effectively and answer the case (if any) they have to meet. All actions against affected parties which involve penal or adverse consequences must be in accordance with the principles of natural justice. The rules of natural justice do not supplant law, but supplement it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the Court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. As is well settled, rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice, viz., (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the alter of administrative convenience or celerity. It is not permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court.

Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. In light of the aforesaid principles if we examine the case on hand a bare reading of the proviso to Section 179 of the Code makes it abundantly clear that there is no statutory provision which specifically excludes application of rule of natural justice while exercising powers under the proviso to the said Section for setting aside the sale. The basic scheme of the proviso is that the Collector may, in appropriate case, after recording his reasons in writing set aside the sale. One of the important ingredients of the principles of natural justice, namely, recording of reasons, is very much incorporated in the proviso to Section 179 of the Code. When an important ingredient of the principles of natural justice is statutorily incorporated and when there is no specific exclusion of the principles of natural justice, there is no reason why the maxim of *audi alteram partem* should not be read into the proviso to Section 179 of the Code more particularly when setting aside auction sale adversely affects the proprietary rights of a person in whose favour an auction sale is concluded. In view of this we are of the opinion that there is no specific exclusion of principles of natural justice and as one of the basic ingredients of principles of natural justice is very much envisaged in the proviso, the Collector was duty bound to issue notice calling the petitioner to explain her case before setting aside the sale.

13. At this stage it would be profitable to refer to a decision of Division Bench of this Court in the case of H.H. Parmar v. Collector, Rajkot and others, 1979 (2) GLR 97. In the said case the petitioner was appointed as Chief Officer of the Municipality by resolution which was passed by the Municipality. When the fact of appointment came to the notice of Collector, Rajkot, he in exercise of powers conferred on him by sec. 258 of the Gujarat Municipalities Act, 1963 stayed operation of the said resolution and issued a notice to the Municipality to show cause why its resolution should not be permanently stayed. The Municipality filed petition in the High Court in which order of Collector staying implementation of the said resolution was challenged. The petition was summarily dismissed. Letters Patent Appeal filed against the order was also dismissed. The Collector after hearing the Municipality confirmed his interim order and permanently stayed the implementation of the said resolution. Accordingly, the Municipality intimated to the petitioner that Collector had permanently stayed implementation of the resolution by which he was

appointed as Chief Officer. It was that order which was challenged by the petitioner before the High Court. One of the arguments which was advanced by the petitioner of the said case was that he was not given an opportunity of being heard before the Collector and, therefore, the impugned order was liable to be set aside. The Division Bench considered the question whether in the context of sub-sec. (1) of Sec. 258, the petitioner was entitled to be heard before Collector had made the impugned order. It was argued on behalf of the Collector that third party who had received some benefits under the resolution, was not entitled to be heard before the benefit which had accrued to him was withdrawn by the Collector by making an order under Sec. 258 (1) of the Act. After examining the scheme of Section 258 (1) of the Act, the Division Bench has held that if an order of appointment has been issued and appointee has taken charge of his office under the resolution, a right accrues to the appointee to hold that office and the question whether the right has lawfully accrued to him or unlawfully accrued to him cannot be decided against him unless he has been heard and, therefore, it was necessary for the Collector before taking an action under Section 258 of the Gujarat Municipalities Act to issue notice to the petitioner giving him a reasonable opportunity of being heard before the impugned order was made. In our view, the principles laid down by the Division Bench will apply with all force to the facts of the present case. It cannot be denied that the proprietary rights of the petitioner have been adversely affected by the impugned order and, therefore, the petitioner should have been given an opportunity to show cause before recording the order setting aside the sale.

14. In the backdrop of the aforesaid settled principles enunciated by the above mentioned judgment, so far as the petitioner's case is concerned, it is neither the case of the respondents nor it is pleaded that the Collector before recording the impugned order in exercise of powers conferred under the proviso to Section 179 of the Code had observed principles of natural justice. It becomes abundantly clear that the Collector has passed the order without giving an opportunity of hearing to the petitioner and, therefore, the principles of natural justice have been violated so far as the petitioner is concerned. The order of the Collector being contrary to principles of natural justice is void. So also the order of revisional authority confirming nullity is also void. These two orders are, therefore, liable to be set aside. In view of these conclusions, we are of the opinion that the judgment of the learned Single Judge is also liable

to be set aside and the appeal deserves to be accepted by allowing the petition.

15. In the net result, the appeal succeeds and accordingly it is allowed. The judgment impugned in the appeal is quashed and set aside. The order passed by Collector as confirmed by the revisional authority in revision is set aside. The matter is remanded to the Collector for deciding it afresh after observing principles of natural justice. The Collector is directed to decide the matter as early as possible and preferably within a period of three months from the date of receipt of the writ. On the facts and circumstances of the case, there shall be no order as to costs.

(J. M. Panchal, J.)

23.2.2000. (A.M. Kapadia, J.)